Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review —	)	IB Docket No. 98-118
Review of International Common Carrier	)	
Regulations	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: July 6, 1998 Released: July 14, 1998

Comment Date: August 13, 1998
Reply Date: August 28, 1998

By the Commission: Commissioner Furchtgott-Roth issuing a separate statement.

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I. Introduction

1. The Telecommunications Act of 1996 directs the Commission to undertake, in every even-numbered year beginning in 1998, a review of all regulations issued under the Communications Act that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be "no longer necessary in the public interest."[1] In particular, the Act directs the Commission to determine whether any such regulation is no longer necessary "as the result of meaningful economic competition between providers of such service."[2] Accordingly, the Commission has begun a comprehensive 1998 biennial review to identify regulations that are overly burdensome or no longer serve the public interest.[3]

2. In keeping with the objectives of the Act, we initiate this proceeding to review and revise our rules governing international common carriers. The proposals in this Notice would streamline and simplify the international Section 214 application rules and eliminate several categories of international Section 214 applications. Specifically, we propose to:

(1) Grant a blanket Section 214 authorization for telecommunications services to unaffiliated international points.

(2) Eliminate the requirement for prior approval of *pro forma* assignments and transfers of control of international Section 214 authorizations.

(3) Allow any carrier with global Section 214 authorization to use any non-U.S.-licensed submarine cable system without specific approval, and clarify the exclusion list for international Section 214 authorizations.

(4) Eliminate the need to apply for a separate Section 214 authorization when applying for a common carrier cable landing license.

(5) Reorganize and simplify the rule on contents of international Section 214 applications and list the obligations of each category of carrier in a separate rule section.

(6) Authorize the provision of switched services over private lines by declaratory ruling instead of requiring a Section 214 application.

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[1] 47 U.S.C. § 161.

[2] 47 U.S.C. § 161(a)(2).

[3] *See* FCC Staff Proposes 31 Proceedings as Part of 1998 Biennial Regulatory Review, News Release (Feb. 5, 1998).

(7) Eliminate the requirement that applicants inform the Commission of every 10 percent or greater shareholder, and require only that applicants provide a list of every greater-than-25-percent shareholder.

3. We have identified a number of ways that we can facilitate the authorization of international telecommunications services while eliminating unnecessary regulations. We seek comment on the proposals and tentative conclusions contained in this Notice. These are not the only deregulatory steps we plan to propose in the area of international telecommunications. Rather, they are steps that we believe can and should be taken expeditiously while other steps are being considered.

II. Background

4. When the International Bureau was created in 1994, it undertook a review of all of its operations with a goal of eliminating unnecessary, outdated regulations and burdens imposed on the public and the industry, as well as clarifying and codifying requirements where necessary. The Bureau implemented many deregulatory initiatives quickly, without rule changes.[4] In addition, the Commission overhauled many of its international rules. For example, in the *1996 Streamlining Order* we created global Section 214 authorizations, reduced paperwork obligations, streamlined tariff requirements for non-dominant international carriers, and ensured that essential information is readily available to all carriers and users.[5] In the *Part 25 Streamlining Order*, we modified our rules to streamline application and licensing procedures and requirements for satellite space and earth stations under Part 25 of the rules.[6] We also streamlined our rules for international and domestic satellite

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[4] For example, in 1994 the Bureau adopted a grant stamp procedure for approving *pro forma* transfers of control and assignments and for approving requests for special temporary authority (STA) for international and domestic earth station use. *See* International Bureau Launches New Procedures, Public Notice (Nov. 21, 1994). In 1995 the Bureau inaugurated an industry briefing series to afford industry an opportunity to present it, on an informal basis, with information and ideas. *See* International Bureau Announces an Industry Briefing Series, Public Notice (Feb. 27, 1995). In response, the Bureau began to use the grant stamp procedure for STA requests for international Section 214 authorizations and expanded its use of status conferences. *See* International Bureau Speeds Processing through the Expanded Use of Grant Stamp and Status Conferences, Public Notice Report No. IN 95-12 (June 6, 1995).

[5] Streamlining the International Section 214 Authorization Process and Tariff Requirements, *Report and Order*, 11 FCC Rcd 12,884 (1996) (*1996 Streamlining Order*).

[6] Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, *Report and Order*, 11 FCC Rcd 21,581 (1996). Through this decision alone, the Bureau concluded that these steps would eliminate the filing of 19,000 pieces of paper annually, 222 years of regulatory delay for the industry, $3.8 million in filing and processing costs to the industry and the Commission by the year 2001, and an average of 24 months in the processing and launch of space stations.

service to permit greater flexibility and more competition in fixed, mobile and direct broadcast satellite services.[7]

5. In our recent *Foreign Participation Order*, we expanded our streamlining measures by broadening the class of foreign-affiliated applicants eligible for streamlined processing.[8] The new competitive conditions created by the World Trade Organization basic telecommunications agreement[9] and the rules adopted in the *Foreign Participation Order* significantly reduced the possibility of market distortion, thereby providing us with an opportunity to further reduce our scrutiny of many applications and afford those applications streamlined processing.[10] The WTO agreement also afforded us an opportunity to adopt policies that permit non-U.S.-licensed satellites to provide services in the United States.[11]

6. During this time, the International Bureau has taken many additional informal steps, such as conducting public briefings on its streamlining efforts, including a public forum on the international Section 214 and Cable Landing License authorization process and other issues.[12] The Bureau also recently has held three regulatory workshops with foreign regulators to promote effective pro-competitive regulatory regimes in other countries as prescribed by the WTO agreement and to promote increased competition in the worldwide market for telecommunications services.[13]

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7 *See* Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, *Report and Order*, 11 FCC Rcd 2429 (1996) (*DISCO I Order*).

8 *See* Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, 12 FCC Rcd 23,891 (1997), *recon. pending* (*Foreign Participation Order*).

9 On February 15, 1997, the United States and 68 other members of the WTO concluded an agreement to open markets for basic telecommunications services. The *Foreign Participation* proceeding was initiated by the Commission in response to this agreement. *See Foreign Participation Order* ¶ 2.

10 *See Foreign Participation Order* ¶¶ 314–329.

11 *See* Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, *Report and Order*, 12 FCC Rcd 24,094 (1997), *recon. and appeals pending* (*DISCO II Order*).

12 *See* Office of General Counsel and International Bureau to Hold Public Forum to Discuss Biennial Review of International Bureau Rules, Public Notice Report No. IN 98-2 (Jan. 13, 1998).

13 *See* FCC Hosts Three Day Workshop with Telecom Regulators from 15 Countries, News Release (Feb. 11, 1998); FCC Hosts Second Workshop with Telecom Regulators from 9 Countries, News Release (May 15, 1998); FCC Hosts Third Workshop in Series with Telecom Regulators from Nine Countries, News Release (June 23, 1998).

III. Discussion of Proposed Rule Changes

A. Blanket Section 214 Authorization for International Service to Unaffiliated Points

7. In this proceeding, we focus on streamlining, and when appropriate eliminating, many of the rules for seeking authorization pursuant to Section 214. Currently, the great majority of international Section 214 applications are granted on a streamlined basis. Streamlined applications, if not opposed, are deemed granted 35 days after public notice, and the carrier may commence operations on the 36th day. This streamlined process allows the Commission to identify whole categories of applications that we expect not to raise any public interest concerns and to grant those applications without individual formal written orders. In the *Foreign Participation Order*, we recognized that changed market conditions had further reduced our need to review many applications, and we identified additional categories of applications that could be included in the streamlined process.[14] The great majority of streamlined applications are unopposed. Generally, the oppositions we have received have involved concerns about a carrier's foreign affiliations, based on our rules prior to adoption of the *Foreign Participation Order*. It appears that there now are few if any grounds that would warrant denial or conditioning of an authorization to serve a route where the applicant is not affiliated with a carrier operating in the destination market.

8. We tentatively conclude that our regulatory safeguards are sufficient so that in no case would we need to deny, in the first instance, an application to provide services on unaffiliated routes. We therefore believe that it is appropriate to consider granting a blanket Section 214 authorization for the provision of international telecommunications services on unaffiliated routes.[15] The blanket authorization would certify that it would serve the public interest, convenience, and necessity to allow any entity that would be a non-dominant carrier to provide facilities-based service, or to resell the international services of other carriers, to any international point except a market in which an affiliated carrier operates.[16] Such a step would eliminate the delay that many new carriers face before commencing service and would also significantly reduce processing burdens on Commission staff. Carriers providing service pursuant to this blanket authorization would continue to be subject to all of

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[14] *See Foreign Participation Order* ¶¶ 314–329; 47 C.F.R. § 63.12.

[15] *See, e.g.*, Petition for Section 11 Biennial Review, filed by SBC Communications, Inc., et al., May 8, 1998, at 26 (suggesting that the Commission issue a blanket grant of international Section 214 authority for routes to countries where carriers have no affiliate or, in the alternative, only require unaffiliated U.S. carriers to notify the Commission prior to providing service over newly acquired international lines).

[16] *Cf.* 47 C.F.R. § 63.07 (granting blanket Section 214 authorization for non-dominant domestic common carriers).

the Commission's rules and policies governing international service.[17] Our proposed rule, Section 63.25,[18] is intended to implement this blanket authorization.

9. We seek comment on the scope of the proposed blanket Section 214 authorization. In particular, we seek comment on whether there is a smaller or larger class of carriers or services for which a blanket authorization would be appropriate. For example, should the blanket authorization be limited to the resale of other carriers' services instead of also authorizing the provision of facilities-based services? Commenters should address whether there remain any public interest considerations that might warrant denying an authorization to provide facilities-based service to a foreign market where the applicant has no affiliate. Furthermore, is it possible to identify a class of affiliations that can be included in a blanket authorization? Commenters should address whether there is a way to include within the blanket authorization a carrier's provision of facilities-based or resold service on routes where it has an affiliation with a carrier that, for example: (1) we have previously found (in some other context) to lack market power in the foreign destination market; (2) has no telecommunications facilities in that market; or (3) has only mobile wireless facilities in that market. We anticipate that, as telecommunications markets become more global, affiliations with foreign carriers will become more common, and many of those affiliations will not raise competitive concerns. Although our proposed rule would authorize the provision of service only on unaffiliated routes, we seek comment on ways to identify affiliations that are equally unlikely to raise public interest concerns and therefore should not require prior Commission review.

10. We tentatively conclude that granting a blanket Section 214 authorization would be a better approach than forbearing from requiring international Section 214 authorizations for any class of applicants.[19] We believe that it is important to continue to require that service be provided only pursuant to an authorization that can be conditioned or revoked. This is consistent with the approach we followed in the *Foreign Participation Order*: to prevent anticompetitive effects in a more competitive marketplace, we no longer rely, in most cases, on restricting entry of any class of carriers; rather, we rely for the most part on additional competition along with reporting requirements and enforcement mechanisms to detect, deter, and penalize anticompetitive conduct. We tentatively conclude, therefore, that we must maintain a requirement that carriers notify the Commission that they are providing international service pursuant to the blanket authorization, and that we must be able to condition or revoke an authorization if necessary to prevent anticompetitive effects.[20] The notification

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17 *See* 47 C.F.R. §§ 63.18(e)(1), (2), 63.21; *see also* Appendix A, §§ 63.21, 63.22, 63.23 (proposed rules governing facilities-based and resale-based international common carriers).

18 For the language of this and all other proposed changes to the Commission's codified rules, see Appendix A.

19 *See* 47 U.S.C. § 160 (forbearance authority); *see also infra* para. 13.

20 See *Foreign Participation Order* ¶¶ 293–296 for a discussion of the need to investigate allegations that a violation of our rules has occurred and of our authority to enforce our safeguards to prevent harm to competition or consumers in the U.S. market.

requirement is necessary to enable us to enforce our other reporting requirements[21] and bring enforcement action if necessary, as well as to review carriers' determinations as to whether they have affiliations. We may also need to review (in consultation with Executive Branch agencies) any given carrier's authorization for national security, law enforcement, foreign policy, and trade concerns. Nevertheless, we seek comment on whether there is any class of carriers for which forbearance from the international Section 214 authorization requirement would meet the statutory forbearance standard.

11. We seek particular comment on the applicability of our tentative conclusions to commercial mobile radio services (CMRS) licensees. We note that the Commission has forborne from exercising its Section 214 authority for domestic CMRS service.[22] We recently declined to forbear from requiring CMRS providers to obtain international Section 214 authorizations in order to provide international service directly to their customers.[23] We seek comment on whether forbearance, or a blanket international Section 214 authorization, or some combination of forbearance with safeguards, is more appropriate for CMRS providers than for other carriers seeking to provide international services.

B. Forbearance from *Pro Forma* Assignments and Transfers of Control

12. *Pro forma* assignments of international Section 214 authorizations and transfers of control of entities holding international Section 214 authorizations currently must be approved in advance by the Commission. In 1997, the International Bureau authorized approximately 40 *pro forma* assignments and transfers of control, and it is possible that more transactions that might otherwise have been undertaken for valid business reasons were not consummated because of the prior-approval requirement. None of those applications raised any issues relevant to serving the public interest by promoting competition or preventing anticompetitive conduct. Nevertheless, under current Commission rules, carriers must file a formal application pursuant to Section 63.18 and an application fee of $745. Each application that is filed requires an expenditure of time and resources by carriers, their lawyers, and the Commission. Furthermore, each transaction is delayed pending Commission review. In practice, the applications are generally granted by a rubber stamp within a few days of filing and announced by public notice within a week of being granted.

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[21] For example, carriers must file copies of operating agreements entered into with foreign correspondents within 30 days of their execution and must file annual reports of overseas telecommunications traffic. 47 C.F.R. § 63.21(b), (d); *see* §§ 43.51, 43.61.

[22] *See* 47 C.F.R. § 20.15(b)(3); Implementation of Sections 3(n) and 332 of the Communications Act, *Second Report and Order*, 9 FCC Rcd 1411, 1480–81 ¶ 182 (1994).

[23] Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, FCC 98-134 (rel. July 2, 1998).

13. In response to two petitions for forbearance filed under Section 10 of the Communications Act,[24] the Commission recently adopted rules forbearing from the prior notification and approval requirements of Section 310(d) for *pro forma* assignments and transfers of control as it relates to wireless telecommunications carriers.[25] We tentatively conclude that the Section 10 forbearance standard is met as well in the context of international Section 214 authorizations. Section 10 provides that the Commission must forbear from applying any regulation or provision of the Act to a telecommunications carrier if the Commission determines that (1) enforcement is not necessary to ensure that charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.[26]

14. We propose to define *pro forma* using the standard that is set forth in Section 73.3540(f) of our broadcast rules, which identifies common categories of transactions that are considered non-substantial and therefore are eligible for *pro forma* treatment: (1) assignment from an individual or individuals (including partnerships) to a corporation owned or controlled by such individuals or partnerships without any substantial change in their relative interests; (2) assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests; (3) assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one; (4) corporate reorganization that involves no substantial change in the beneficial ownership of the corporation; (5) assignment or transfer from a corporation to a wholly owned subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or (6) assignment of less than a controlling interest in a partnership.[27] In general, a change in ownership or control is "substantial" if 50 percent or more of the stock of the licensee is transferred or if, as a result of the transaction, the licensee will be controlled by persons who were not previously

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[24] 47 U.S.C. § 160, *as added by* Telecommunications Act of 1996, Pub. L. No. 104-104, § 401, 110 Stat. 56.

[25] *See* Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers, *Memorandum Opinion and Order*, 13 FCC Rcd 6293 (1998) (*Section 310(d) Forbearance Order*).

[26] 47 U.S.C. § 160(a).

[27] *See* 47 C.F.R. § 73.3540(f); *see also infra* Appendix A, § 63.24(a); *cf. Section 310(d) Forbearance Order* ¶¶ 8–9.

in control of the licensee.[28] "Control" can be either *de jure*, which refers to ownership of 50 percent or more of a company, or *de facto*, which can exist regardless of the amount of ownership.[29]

15. We tentatively conclude that prior review of *pro forma* transfers and assignments is not necessary to ensure that carriers' charges, practices, classifications, and services are just and reasonable and not unjustly or unreasonably discriminatory. Because *pro forma* transactions do not affect actual control of the carrier, they are unlikely to have an impact on the licensees' charges, practices, classifications, or services. Thus, it has not been necessary to consider these issues in our review of *pro forma* transactions. Given the existence of other mechanisms to deal with these issues[30] and the fact that we have had no need to consider them in the context of *pro forma* transactions, we tentatively conclude that the first prong of the forbearance standard is met.

16. We also tentatively conclude that prior approval of *pro forma* transfers and assignments is not necessary for the protection of consumers. Based on our experience reviewing *pro forma* applications, we believe that *pro forma* transfers and assignments rarely, if ever, raise issues of consumer protection, because the ultimate control of the carrier — which has already been subject to Commission review and approval — does not change as a result of the transaction. We therefore tentatively conclude that the second prong of the forbearance standard is met.

17. Finally, we tentatively conclude that the third prong of the forbearance standard is met. We tentatively conclude that *pro forma* assignments and transfers of control of international Section 214 authorizations do not raise public interest concerns and that we should therefore cease requiring carriers to obtain prior Commission approval of such transactions. Paragraph (b) of Section 10 directs us to consider whether forbearance would promote competitive market conditions. We tentatively conclude that eliminating the requirement for prior approval would promote competitive market conditions by allowing carriers to change their ownership structure or internal organization as business needs require without undue regulatory burdens.

18. Assignments and transfers of control that do not fall into the categories that we propose to define as *pro forma* would continue to require prior approval. Furthermore, carriers would remain subject to Section 63.11 of our rules, which requires notification of affiliations with foreign carriers, notwithstanding this relaxation of our rules on *pro forma* assignments and transfers of control. Thus,

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[28] *Cf. Metromedia, Inc., Memorandum Opinion and Order*, 98 FCC 2d 300, 305 ¶¶ 8–9 (1984) (discussing the test for whether an interest to be transferred involves "a substantial change in ownership or control" for purposes of Section 309(c)(2)(B)).

[29] *See Section 310(d) Forbearance Order* ¶ 7.

[30] For example, pursuant to Section 208 of the Act, the Commission must investigate and act on a complaint by any party or entity concerning a common carrier's charges, classifications, regulations, or practices. 47 U.S.C. § 208. Furthermore, as discussed below, carriers must notify the Commission and, in some cases, seek advance approval, of affiliations with foreign carriers. *See* 47 C.F.R. § 63.11.

for example, if an otherwise–*pro forma* transaction nevertheless results in acquisition by a foreign carrier of more than 25 percent of an authorized carrier, the carrier must seek prior Commission approval of the transaction.

19. Because the Commission needs to maintain complete and current records of the identities of authorized international carriers, we propose to require that authorized carriers that undertake a *pro forma* assignment notify the Commission by letter within 30 days after consummation of the transaction. Such a letter must contain the carrier's certification that the subject assignment is non-substantial and within the definition of *pro forma* that we propose to adopt in Section 63.24(a). We tentatively conclude that we need not place those letters on public notice because they will raise no substantial public interest issues upon which public comment would be necessary.

20. We tentatively conclude that we need not require that carriers notify us of *pro forma* transfers of control. Where a transaction affects neither the identity of the legal entity holding the Section 214 authorization nor the ultimate control of that entity, there is no need to update the Commission's records.

21. We therefore propose to add a new Section 63.24 to define *pro forma* and to allow carriers to undertake *pro forma* assignments and transfers of control of international Section 214 authorizations without Commission approval. As proposed, new Section 63.24 of our rules would apply to all authorized international carriers. We seek comment on the scope of our proposed exception to the requirement for prior approval of assignments and transfers of control of international Section 214 authorizations.

C. Provision of Service by Wholly Owned Subsidiaries

22. We also propose to amend Section 63.21 of our rules to provide that an international Section 214 authorization effectively authorizes the carrier to provide services through its wholly owned subsidiaries. This provision would make clear that, for example, a carrier that operates in multiple markets with a separate subsidiary in each market needs only a single international Section 214 authorization to cover all of those subsidiaries. It is important to note that this flexibility must not be used to circumvent any structural-separation provision in the Commission's rules, such as the rule in Section 63.10 that dominant international carriers must provide service through an entity that is separate from its affiliated foreign carrier. We seek comment on whether our proposed rule (Section 63.21(i) in Appendix A) would defeat any of the Commission's structural-separation requirements.

D. Authorization to Use All Non-U.S.-Licensed Submarine Cables and Simplification of the International Section 214 Exclusion List

23. In the *1996 Streamlining Order*, the Commission greatly reduced the number of international Section 214 applications that must be filed by adopting rules creating global Section 214

authorizations for facilities-based carriers.[31] A global Section 214 authorization authorizes a carrier to serve all markets except those where it is affiliated with a foreign carrier that has sufficient market power to affect competition adversely in the U.S. market or that the Commission has yet to determine does not have such market power.[32] Global facilities-based authorizations are subject to an "exclusion list" maintained by the International Bureau. The exclusion list indicates any countries and facilities for which a facilities-based carrier must obtain specific Section 214 authorization.[33] The list may be changed from time to time when modification would serve the public interest.[34]

24. Any facilities-based carrier desiring to serve a market or use a facility listed on the exclusion list must file a separate Section 214 application for that purpose. The exclusion list is included as part of each public notice that lists granted streamlined applications and is available in the International Bureau's Reference Center.[35] Currently, the list includes Cuba, all non-U.S.-licensed satellite systems, and all non-U.S.-licensed submarine cable systems except for specifically listed non-U.S.-licensed submarine cable systems. The International Bureau recently modified the exclusion list to add several non-U.S.-licensed cable systems,[36] but until then it had not been modified since October 1996.[37]

25. The Commission's rules currently provide that a carrier with a global facilities-based authorization may not use non-U.S.-licensed facilities unless and until it has received specific prior approval or the Commission generally approves their use and so indicates on the exclusion list.[38] It thus sets up a presumption against the use of non-U.S.-licensed facilities. We anticipate that, in a more competitive marketplace with more facilities-based carriers operating in all parts of the world,

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31 *See 1996 Streamlining Order*, 11 FCC Rcd at 12,886–94 ¶¶ 3–20. The Commission adopted similar rules for resale carriers. *See id.* at 12,895–96 ¶¶ 24–25.

32 *See* 47 C.F.R. § 63.18(e)(1).

33 The exclusion list, by its terms, applies only to authorized international facilities-based carriers. Because resellers provide their international switched and private line services by reselling facilities-based carriers' services, the service and facility restrictions specified in the exclusion list equally bind resale carriers as a practical matter.

34 *See 1996 Streamlining Order*, 11 FCC Rcd at 12,893 ¶ 18.

35 A current version of the exclusion list is also maintained on the Commission's World Wide Web site at http://www.fcc.gov/ib/td/pf/exclusionlist.html.

36 *See PLD Telekom, Inc., Order, Authorization and Certificate*, DA 98-888 (rel. May 13, 1998).

37 Streamlining the International Section 214 Authorization Process — Exclusion List, *Order on Reconsideration*, 11 FCC Rcd 14,372 (1996).

38 *See* 47 C.F.R. § 63.18(e)(1)(ii)(B).

carriers will wish to use more non-U.S.-licensed facilities for routing U.S. traffic.[39] We believe that there is no longer any reason for a blanket prohibition on the use of non-U.S.-licensed submarine cable systems. In the two years since we adopted the *Streamlining Order*, no one has brought to our attention any public interest reason to prohibit the use of any particular cable systems for the provision of U.S. international traffic. We therefore believe that the presumption should now favor permitting the use of non-U.S.-licensed cable systems.

26. We therefore propose to amend our rules to remove all non-U.S.-licensed cable systems from the exclusion list and to allow any facilities-based carrier to use any foreign cable system in its provision of U.S. international service.[40] If it becomes necessary to prohibit the use of any specific cable system (whether one that lands on U.S. shores or one that does not), we may add it to the exclusion list. In such a case, we will amend the exclusion list only after providing public notice and an opportunity for affected parties to comment on the amendment. We envision such exclusions taking place only in the most imperative of circumstances. If the President duly issues an Executive Order to prohibit or restrict service to a particular country or to prohibit or restrict use of particular facilities, however, we will amend the exclusion list and issue a public notice to that effect *without* opportunity for comment or hearing.[41]

27. Accordingly, we tentatively conclude that we should amend the provisions currently contained in Sections 63.18(e)(1) and 63.15(a) of our rules and the exclusion list maintained by the International Bureau. The exclusion list would then provide that carriers with global Section 214 authorizations to provide facilities-based service will be authorized to use any facilities except non-U.S.-licensed satellite systems that are not specifically identified.[42]

28. We tentatively conclude that we should not modify our current practice of requiring specific Section 214 authority for the use of all non-U.S.-licensed satellite systems unless otherwise indicated on the exclusion list. We tentatively conclude that a decision whether to permit a particular facilities-based carrier to use a non-U.S.-licensed satellite system or whether generally to permit use of

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[39] For example, PLD recently sought and was granted permission to use several non-U.S.-licensed cable and satellite systems. *See PLD Telekom.*

[40] Notwithstanding this change, no carrier may use any submarine cable system that lands on the shores of the United States unless the cable system has a valid cable landing license pursuant to the Submarine Cable Landing License Act, 47 U.S.C. §§ 34–39, and 47 C.F.R. § 1.767.

[41] *See* International Emergency Economic Powers Act, 50 U.S.C. §§ 1701–1706 (providing that, where a foreign country poses a threat to national security, the President has authority to investigate, regulate, or prohibit commercial and financial activities with that country); *see also 1996 Streamlining Order*, 11 FCC Rcd at 12,893 ¶ 18 & n.30.

[42] The exclusion list will continue to require separate authorization to provide service to Cuba. Because of U.S. Department of State requirements, the Commission maintains separate filing requirements for the provision of service to Cuba. *See* FCC to Accept Applications for Service to Cuba, Public Notice Report No. I-6831 (July 27, 1993).

a non-U.S.-licensed satellite system by all facilities-based carriers should be made pursuant to the policies adopted in the *DISCO II Order*.[43]

E. Section 214 Authorizations for Construction of New Submarine Cable Facilities

29. Applicants for common carrier cable landing licenses currently must file two applications: a cable landing license application pursuant to Section 1.767 of the Commission's rules and a Section 214 application for the construction of new lines pursuant to Section 63.18(e)(6) of the Commission's rules. Applicants for non–common carrier cable landing licenses need only file an application for a cable landing license and must justify, in the application, our granting the license on a non–common carrier basis.[44] We tentatively conclude that no useful purpose is served by requiring a carrier that is authorized to serve a given route on a facilities basis to apply for additional Section 214 authority for the construction of a new undersea cable on that route. We therefore propose to eliminate this requirement.

30. By contrast, the Submarine Cable Landing License Act, 47 U.S.C. §§ 34–39, requires that a cable landing license be obtained for any undersea cable directly or indirectly connecting the United States with any foreign country. Pursuant to Executive Order No. 10,530, the Commission has been delegated the President's authority under that act to grant cable landing licenses but must obtain the approval of the State Department and advice from other Executive Branch agencies before granting any cable landing license. Because it is not a part of the Communications Act, we cannot use our Section 10 forbearance authority to forbear from requiring cable landing licenses. Therefore, we must continue to require any party seeking to construct an undersea cable to file a cable landing license application pursuant to Section 1.767.

31. In order to eliminate the need to apply for separate Section 214 authority to build a new common carrier cable system, we propose to include the authorization to construct new lines among the rights granted to all authorized facilities-based carriers. A carrier seeking to construct and operate a new common carrier cable system between the United States and foreign points for which it is already authorized to provide facilities-based service would not need to seek additional Section 214 authorization for that purpose. Only a cable landing license would be required. We thus propose to amend Section 63.18(e)(1) by striking the reference to "facilities previously authorized by the Commission" and including in the new Section 63.22 a provision stating that a facilities-based carrier

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[43] *See* Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, *Report and Order*, 12 FCC Rcd 24,094 (1997) (*DISCO II Order*).

[44] In determining whether we will grant a non–common carrier cable landing license, we have followed a two-part test. The Commission has authorized non–common carrier cables where (1) there is no legal compulsion to serve the public indifferently and (2) there are no reasons implicit in the nature of the operations to expect an indifferent holding-out to eligible public users. *See Tel-Optik, Ltd.*, 100 F.C.C.2d 1033, 1040–42, 1046–48 (1985); *see also Cable & Wireless, plc*, 12 FCC Rcd 8516 (1997).

may construct, acquire, and operate lines in any new common carrier facility between the United States and all international points that the carrier is authorized to serve on a facilities basis. In order to ensure compliance with environmental statutes, we tentatively conclude that we must limit this grant of authority by stating that it does not authorize the construction or extension of lines that may have a significant effect on the environment as defined in our environmental rules.[45]

32. We also tentatively conclude that our environmental rules should provide that the construction of new submarine cables in particular (as opposed to the construction or extension of other international lines) will not have a significant effect on the environment. Section 1.1306 of our rules categorically excludes from environmental processing Commission actions on certain facilities or equipment that "are deemed individually and cumulatively to have no significant effect on the quality of the human environment."[46] In 1974, the Commission concluded that any action on an application for a submarine cable landing license would be categorically excluded from environmental processing.[47] In reaching this conclusion, the Commission noted that, "[a]lthough laying transoceanic cable obviously involves considerable activity over vast distances, the environmental consequences for the ocean, the ocean floor, and the land are negligible."[48] The Commission went on to describe how, "[i]n shallow water, the cable is trenched and immediately covered; in deep water, it is simply laid on the ocean floor"; and "[i]n the landing area, it is trenched for a short distance between the water's edge and a modest building housing facilities."[49] In revising its environmental rules in 1984, the Commission did not specifically address submarine cable systems or otherwise exempt action on such facilities from environmental processing.[50] We have no reason to believe that the facts that supported our 1974 decision have changed since that time. We therefore tentatively conclude that, as we decided in 1974, the construction of new submarine cable systems, individually and cumulatively, will

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45 *See* 47 C.F.R. § 1.1307 (1997) (facilities that may significantly affect the environment for purposes of the environmental processing requirements include, e.g., facilities that are to be located in an officially designated wilderness area, facilities that are to be located in an officially designated wildlife preserve, and facilities that may affect properties that are listed or are eligible for listing in the National Register of Historic Places); *cf.* 47 C.F.R. § 63.07(b). Therefore, for example, this new Section 63.22(e) would not authorize the construction of terrestrial U.S.–Canada facilities located in an officially designated wildlife preserve.

46 47 C.F.R. § 1.1306(a); *see* 40 C.F.R. §§ 1507.3(b)(2)(ii), 1508.4 (Council on Environmental Quality rules implementing the National Environmental Policy Act of 1969); *see also* National Environmental Policy Act of 1969 § 102, 42 U.S.C. § 4332 (1994).

47 *See* Implementation of the National Environmental Policy Act of 1969, *Report and Order*, 49 F.C.C.2d 1313, 1321 ¶ 17 (1974) (*NEPA Implementation*).

48 *Id.*

49 *Id.*

50 *See* Amendment of Environmental Rules in Response to New Regulations Issued by the Council on Environmental Quality, *Report and Order*, 60 R.R.2d 13 (1986).

not have a significant effect on the environment. Accordingly, we seek comment on amending our environmental rules to reflect a new categorical exclusion for the construction of new submarine cable systems.[51] We direct the Office of Public Affairs to send a copy of this Notice to the Council on Environmental Quality.

33. This proposal may necessarily be subject to a change in the application fees for cable landing licenses and Section 214 authorizations. Application fees are set by statute and may not be changed by the Commission. Currently, the application fee for a *non*–common carrier cable landing license is $12,335, while the fee for a common carrier cable landing license is only $1,250. The application fee for a Section 214 authorization for "overseas cable construction" is $11,090, bringing the total for a common carrier submarine cable to $12,335. We believe Congress's intent was that the application fees be the same whether an applicant intends to construct a common carrier or non–common carrier cable system. If we were to eliminate the requirement that carriers apply for the accompanying Section 214 authorization, then the application fee for a common carrier cable landing license would be approximately one-tenth of the fee for a non–common carrier cable landing license. The Commission will consider asking Congress to consolidate the application fees for cable landing licenses, and we may not be able to adopt our proposal without such a fee change.

F. Reorganization of Part 63 Rules

34. In addition to the above proposed changes to our rules, we also seek to simplify our existing rules. We tentatively conclude that we should reorganize Section 63.18, which describes the contents of applications for international Section 214 authorizations. Applicants have often complained that the rules, as currently arranged, are confusing. They state that Section 63.18 is too long and difficult to follow. One complaint is that it contains information that is not relevant to the processing of the application, such as conditions the carrier would be subject to after grant of its authorization. We propose to remedy this by creating new sections of the rules that will contain authorized carriers' ongoing obligations. Such reorganization would allow us to shorten the section on contents of applications and make it easier for authorized carriers to find the requirements that apply to them. We also propose to create new sections for definitions and for our policy on the provision of switched services over international private lines. Most of the changes we propose in this section of the *Notice* are not substantive, but would serve to simplify the process of applying for an authorization and clarify the obligations of authorized carriers. The substantive changes and the major non-substantive changes are discussed below. No substantive changes are intended other than those discussed below. Commenters are encouraged to review the proposed rules contained in Appendix A and to comment on the extent to which they could be further simplified as well as to ensure that no inadvertent substantive changes would result.

35. We propose to create a separate Section 63.09 of the rules to contain definitions applicable to Sections 63.09 through 63.24. The new section would contain definitions of terms that are used throughout those sections and would eliminate the need for those rules to refer to definitions

[51] *See* Appendix A, § 1.1306 Note 1.

given in other sections, particularly the definitions of *affiliation* and *foreign carrier* currently in Section 63.18(h)(1)(i).

36. We propose to create two new sections of the rules, Sections 63.22 and 63.23, which will contain the obligations of, respectively, facilities-based carriers and resale carriers. We propose to move paragraphs 63.18(e)(1)(ii)(A)–(E), which currently contain the obligations of facilities-based carriers, to Section 63.22. Applicants for facilities-based authorizations will be required to certify that they will comply with the requirements of Section 63.22 but will not have to repeat the text of those requirements. Likewise, we propose to move paragraphs 63.18(e)(2)(ii)(A)–(C) to the new Section 63.23. These rearrangements will also give authorized carriers an easier place to find the Commission rules that apply to them on an ongoing basis.

37. We propose to include in the new Section 63.22 a provision codifying the benchmark settlement rate condition that we adopted in the recent *Benchmarks Order*.[52] In that order, we created a general obligation that all authorized facilities-based carriers may provide service to a market served by an affiliate that terminates U.S. international traffic only if that affiliate has in effect a settlement rate with U.S. international carriers that is at or below the Commission's relevant benchmark for that market.[53] We tentatively conclude that it would serve to clarify carriers' general obligations to include that already-existing obligation in Section 63.22(f) of the Commission's rules.

38. The revised, and much shorter, Section 63.18 would make clear that there are two categories of international carriers — facilities-based carriers and resale carriers. Further, there would be four main categories of applications — to become a facilities-based carrier, to become a resale carrier, to transfer control of a carrier or assign an authorization, and to serve a route not covered by a global authorization.[54] The latter category of application would include applications to serve affiliated routes and applications to serve countries or to use facilities listed on the exclusion list. We propose to add subheadings to paragraphs (e)(1) through (e)(4) to clarify those categories of applications.

39. In the *Foreign Participation Order*, we found that it is no longer necessary to scrutinize investments in or by foreign carriers that do not result in affiliations — that is, non-controlling

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[52] International Settlement Rates, *Report and Order*, 12 FCC Rcd 19,806 (1997), *recon. and appeal pending* (*Benchmarks Order*).

[53] *See Benchmarks Order* ¶¶ 195–231; *see also id.* ¶ 228 (concluding that the condition should apply to all existing Section 214 certificate holders). We note that the Commission has stayed, pending reconsideration of the *Benchmarks Order*, the requirement that the affiliates of facilities-based carriers authorized to serve an affiliated route prior to January 1, 1998, negotiate with their U.S. carrier correspondents a settlement rate that is at or below the benchmark by April 1, 1998. *See* International Settlement Rates, *Order*, FCC 98-49 (rel. Mar. 30, 1998).

[54] If we adopt a blanket authorization such as that proposed in Section III.A *supra*, we may be able to further simplify Section 63.18.

investments of 25 percent or less.[55] We believe that non-controlling investments of 25 percent or less very rarely raise any public interest issues that require Commission scrutiny. In the *Foreign Participation Order*, we amended Section 63.11, which applies to authorized carriers, to increase from 10 percent to greater than 25 percent the level of investment that must be reported to the Commission. Section 63.18, however, still provides that *applicants* must list all of their 10 percent or greater direct and indirect shareholders in support of their certifications as to whether they are affiliated with any foreign carrier. We propose to modify that provision so that applicants will be required to list only the direct and indirect shareholders with interests greater than 25 percent. We seek comment on whether it remains necessary to scrutinize direct and indirect investments in applicants at a greater level of detail than we require after the carrier is authorized.

40. It is important to note that we do not propose to change our standard for affiliation. This standard includes investments in a carrier by two or more foreign carriers in circumstances where the foreign carriers are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of basic international telecommunications services in the United States.[56] We will continue to require that each applicant certify whether it is a foreign carrier or is affiliated with one or more foreign carriers. An applicant that is uncertain as to whether its relationship with one or more foreign carriers qualifies as an affiliation should include the relevant information in its application so that the Commission can evaluate the relationship under the affiliation standard.

41. We propose to create a new Section 63.16 containing the Commission's policy on the provision of switched services over international private lines interconnected to the public switched network. When the Commission authorizes the provision of switched services over private lines to a particular country, that determination affects all authorized carriers, not just the applicant. In recognition of that fact, Section 63.16 would simplify the process of requesting such a determination. Any authorized carrier would be able to request such a determination in a petition for declaratory ruling and would no longer be required to provide the detailed carrier-specific information required by Section 63.18. This would also remove a category of application from Section 63.18(e). An applicant for international Section 214 authorization would still be able to request the determination in its application by including the showing described in Section 63.16.

42. Before we adopted the *Foreign Participation Order*, dominant carriers were required to obtain prior Commission approval before adding circuits, and non-dominant resellers of international private lines were required to file annual reports of their circuit additions. In the *Foreign Participation Order*, we removed the prior-approval requirement for dominant carriers but neglected to amend Section 63.15(b) to provide that dominant resellers of international private lines are nevertheless subject to the annual reporting requirement. We accordingly propose to strike the word *non-dominant* from that provision. We also propose to move that provision to the new Section 63.23, which contains obligations generally applicable to resellers. Because we also propose to eliminate the

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[55] *See Foreign Participation Order* ¶¶ 330–334.

[56] *See* 47 C.F.R. § 63.18(h)(1)(i)(B); Appendix A, § 63.09(e)(2).

need to file a separate Section 214 application for the construction of new international common carrier facilities,[57] we would be able to delete Section 63.15 entirely.

43. We are aware that not every assignment that we authorize is ultimately consummated. Because the Commission needs to maintain complete and current records of the identities of authorized international carriers, we propose to require that carriers authorized to undertake an assignment notify the Commission by letter within 30 days after either consummation of the assignment or a decision not to go forward with the assignment. For the same reason, we propose to clarify in Section 63.21(j) that a carrier that changes its name need only notify the Commission by letter within 30 days after the name change.

44. Our proposed rules also contain a simplified paragraph (h) of Section 63.18. We believe we can significantly shorten and clarify the rule by moving the definitions of *affiliation* and *foreign carrier* to Section 63.09 and consolidating the two subparagraphs that describe our standard for evaluating applications by foreign-affiliated carriers. No substantive changes are intended, and we seek comment on whether any inadvertent substantive changes might result from these proposed amendments.

45. We tentatively conclude that the reorganized rule sections should make it easier for applicants to determine the precise information needed in an application for Section 214 authority. In addition, by consolidating the obligations into Sections 63.22 and 63.23, we would enable authorized carriers readily to identify those obligations that apply to their authorizations. Furthermore, expressly codifying the obligations of each class of carriers would facilitate changing those obligations as necessary. We believe that these rule changes should reduce delays in the processing of applications by reducing the number of applications that are incomplete when submitted. We seek comment on the proposed non-substantive changes to Section 63.18 and whether any inadvertent substantive changes might result.

IV. Conclusion

46. In this Notice, we propose to eliminate unneeded regulatory requirements and decrease unnecessary paperwork for carriers while advancing the objectives of the Communications Act. We propose to clarify and codify requirements where necessary to pursue a common-sense approach to regulation. We have examined our rules with a view toward further reducing regulatory and administrative burdens on carriers and have developed the proposals contained in this Notice. We tentatively conclude that the measures proposed herein will benefit consumers and will create significant processing and operational efficiencies for the Commission.

[57] *See supra* Section III.E.

V. Procedural Matters

A. *Ex Parte* Presentations

47. This is a permit-but-disclose notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

B. Initial Regulatory Flexibility Analysis

48. The Regulatory Flexibility Act of 1990, 5 U.S.C. §§ 601–612, (RFA) as amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847, requires an initial regulatory flexibility analysis in notice-and-comment rulemaking proceedings, unless we certify that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The purposes of this proceeding are to eliminate some regulatory requirements and to simplify and clarify other existing rules. The proposals do not impose any additional compliance burden on small entities dealing with the Commission. In fact, we anticipate that the rule changes we propose will reduce regulatory and procedural burdens on small entities. Accordingly, we certify, pursuant to Section 605(b) of the RFA, that the rules, if promulgated, would not have a significant economic impact on a substantial number of small business entities, as defined by the RFA. The Office of Public Affairs, Reference Operations Division, will send a copy of this Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act. We will analyze the information submitted during the comment period, and if it is determined at the final rule stage that the rule changes will have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis will be prepared.

C. Initial Paperwork Reduction Act of 1995 Analysis

49. This Notice of Proposed Rulemaking contains either a proposed or a modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due 60 days from publication of this Notice in the *Federal Register*. Comments should address the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Comment Filing Procedures

50. Comments and reply comments should be captioned in IB Docket No. 98-118. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before August 13, 1998, and reply

comments on or before August 28, 1998. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Please note, however, that comments and reply comments may be filed electronically, as described below. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Douglas Klein of the International Bureau, 2000 M Street, N.W., Suite 800, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. Parties are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in WordPerfect 5.1 format.

51. For purposes of this proceeding, we hereby waive those provisions of our rules that require formal comments to be filed on paper, and we encourage parties to file comments electronically. Electronically filed comments that conform to the following guidelines will be considered part of the record in this proceeding and accorded the same treatment as comments filed on paper pursuant to our rules. To file electronic comments in this proceeding, you must use the electronic filing interface available on the FCC's World Wide Web site at http://dettifoss.fcc.gov:8080/cgi-bin/ws.exe/beta/ecfs/upload.hts. Further information on the process of submitting comments electronically is available at that location and at http://www.fcc.gov/e-file/.

52. Written comments by the public on the proposed and/or modified information collections are due on or before sixty days after publication of this Notice in the *Federal Register*. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

E. Ordering Clauses

53. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 10, 11, 201(b), 214, 303(r), 307, 309(a), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 160, 161, 201(b), 214, 303(r), 307, 309(a), 310, this NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

54. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this NOTICE OF PROPOSED RULEMAKING, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

55. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this NOTICE OF PROPOSED RULEMAKING to the Council on Environmental Quality.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A

Proposed Rules

Parts 1, 43, and 63 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations) are amended as follows:

PART 1 — PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

2. Section 1.767 is amended by revising paragraphs (a)(6) and (a)(7) and adding new paragraphs (a)(8) and (a)(9) to read as follows:

§ 1.767 Cable landing licenses.

(a) ***

(6) A statement as to whether the cable will be operated on a common carrier or non-common carrier basis;

(7) A list of the proposed owners of the cable system, their voting interests, and their ownership interests by segment in the cable;

(8) For each proposed owner of the cable system, a certification as to whether the proposed owner is, or has an affiliation with, a foreign carrier. Include the information and certifications required in § 63.18(h)(1) and (2) of this chapter; and

(9) Any other information that may be necessary to enable the Commission to act on the application.

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3. Section 1.1306 is amended by adding the following sentence to the end of Note 1:

§ 1.1306 Actions which are categorically excluded from environmental processing.

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NOTE 1: *** The provisions of § 1.1307(a) and (b) of this part do not encompass the construction of new submarine cable systems.

PART 43 — REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

4. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104-104, secs. 402 (b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

5. Section 43.61 is amended by revising the last sentence of paragraph (c) to read as follows:

§ 43.61 Reports of international telecommunications traffic.

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(c) *** For purposes of this paragraph, *affiliation* and *foreign carrier* are defined in § 63.09 of this chapter.

PART 63 — EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

6. The authority citation for Part 63 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 218, 403, 533 unless otherwise noted.

7. Section 63.09 is added to read as follows:

§ 63.09 Definitions applicable to international Section 214 authorizations.

The following definitions shall apply to §§ 63.09–63.24 of this part, unless the context indicates otherwise:

(a) *Facilities-based carrier* means a carrier that holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in the U.S. end of an international facility, regardless of whether the underlying facility is a common carrier or non-common carrier submarine cable or an INTELSAT or separate satellite system.

(b) *Control* includes actual working control in whatever manner exercised and is not limited to majority stock ownership.

(c) *Special concession* is defined as in § 63.14(b).

(d) *Foreign carrier* is defined as any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of the International Telecommunication Regulations, see Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC-88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country.

(e) An *affiliation with a foreign carrier* includes the following:

(1) A greater than 25 percent ownership of capital stock, or controlling interest at any level, by the carrier, or by any entity that directly or indirectly controls or is controlled by it, or that is under direct or indirect common control with it, in a foreign carrier or in any entity that directly or indirectly controls a foreign carrier; or

(2) A greater than 25 percent ownership of capital stock, or controlling interest at any level, in the carrier by a foreign carrier, or by any entity that directly or indirectly controls or is controlled by a foreign carrier, or that is under direct or indirect common control with a foreign carrier; or by two or more foreign carriers investing in the carrier in the same manner in circumstances where the foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of basic international telecommunications services in the United States. A U.S. carrier also will be considered to be affiliated with a foreign carrier where the foreign carrier controls, is controlled by, or is under common control with a second foreign carrier that is affiliated with that U.S. carrier under this section.

(f) An *affiliation with a U.S. facilities-based international carrier* is defined as in paragraph (e), except that the phrase "U.S. facilities-based international carrier" shall be substituted for the phrase "foreign carrier."

NOTE 1: The assessment of "capital stock" ownership will be made under the standards developed in Commission case law for determining such ownership. See, e.g., Fox Television Stations, Inc., 10 FCC Rcd 8452 (1995). "Capital stock" includes all forms of equity ownership, including partnership interests.

NOTE 2: Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent, it shall not be included for purposes of this multiplication. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of "carrier," then X's interest in "carrier" would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's

interest in "carrier" would be 7.8 percent (0.30 x 0.26). Under the 25 percent attribution benchmark, X's interest in "carrier" would be cognizable, while A's interest would not be cognizable.

8. Section 63.10 is amended by removing the third sentence of paragraph (a) introductory text, the last sentence of paragraph (a)(4), and the last sentence of paragraph (c)(5).

9. Section 63.11 is amended by revising paragraphs (a)(1) and (a)(2) and by removing the last sentence of paragraph (c)(1) to read as follows:

§ 63.11 Notification by and prior approval for U.S. international carriers that have or propose to acquire an affiliation with a foreign carrier.

(a) ***

(1) acquisition of a direct or indirect controlling interest in a foreign carrier by the authorized carrier, or by any entity that directly or indirectly controls the authorized carrier, or that directly or indirectly owns more than 25 percent of the capital stock of the authorized carrier; or

(2) acquisition of a direct or indirect interest in the capital stock of the authorized carrier by a foreign carrier or by an entity that directly or indirectly controls a foreign carrier where the interest would create an affiliation within the meaning of § 63.09(e)(2).

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10. Section 63.14 is amended by removing the last sentence of paragraph (a).

11. Section 63.15 is removed.

§ 63.15 [removed]

12. Section 63.16 is added to read as follows:

§ 63.16 Switched services over private lines.

(a) Except as provided in § 63.22(g)(2), a carrier may provide switched basic services over its authorized private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines.